IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10837 OF 2004

Nikhatjahan Adam Attar — Petitioner
vs.
Adam Abdul Attar — Respondent

Mr.I.M. Khairdi for the petitioner.

Mr.N.J.Patil for the respondent.

CORAM : S. A. BOBDE,J.

DATED : 19th October 2005

P.C.

Rule. Returnable forthwith.

2. By consent, rule is heard finally at this stage.

3. The petitioner is the wife of the respondent. This petition arises out of order dated 22.11.2004 passed by the 2nd Additional District Judge, Sangli by which the petitioner, the mother of two minor boys directed to hand over the custody of the two minor children to the respondent-father. Admittedly, the order has been passed in the absence of the petitioner. Mr.Patil, the learned counsel for the respondent contends that the petitioner-mother deliberately remained absent from the court proceedings though she was served. This contention is denied on behalf of the petitioner on the ground that the petitioner was suffering from viral fever etc. on the relevant dates. In any case, at this

juncture, it does not appear to be necessary to go into the question whether the petitioner had sufficient cause for remaining absent in view of the statement made by the learned counsel for the petitioner that the petitioner will remain present on such date as may be fixed by this Court.

4. Having regard to the fact that the matter involves the custody of two minor boys aged 12 years and 8 years approximately, I am of the view that the exparte order, whether due to the deliberate absence of the petitioner or otherwise is liable to be set aside in the interest of justice so that the trial Court can ascertain the situation and pass an appropriate orders regarding interim custody.

5. In the circumstances, the impugned order is set aside. The petitioner is directed to appear before the trial Court on 28.10.2005. The trial Court is directed to dispose of the application in accordance with law on its merits by the end of December 2005.

6. Rule is made absolute in the above terms.

(S. A.BOBDE,J.)